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Western Michigan University

Center for the Study of Ethics in Society

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David H. Smith

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THOUGHTS ON KEEPING MY MOUTH SHUT

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Some time ago, I found myself in a meeting with a colleague who was planning a faculty seminar on moral issues related to war. He asked my advice about including another faculty member better known to me than to him. The subject of discussion is learned, well intentioned, desperately in need of support. He is also intemperate, self-righteous and relentless in pursuit of the social causes to which he is committed. He can be impossible to work with. What should I say?

Earlier, another colleague had asked me about a former student. She (the student) had taken a course with me in the previous year. It proved a difficult semester for her. She has a ten-year-old child born out of wedlock. Just before taking my class, she decided to abort another pregnancy because she and the child's father were about to marry and were unready to handle a baby. Then, two weeks after their marriage, her new husband left her because he had found someone else. Now my former student was behaving erratically in a colleague's class. She seemed depressed, moody and inconsistent in her performance. My colleague asks if I know anything that might be helpful. Should I tell him what I know?

Not long after these events the nation read with mixed feelings the details of President's Reagan's prostate surgery. Stories clearly explaining everything that was to be done, with illustrations, were published on the front pages of newspapers. Parts of the presidential plumbing were subjected to extensive public scrutiny. Was this offensive in any serious sense?

These short anecdotes suggest some dimensions of the issue of confidentiality as it comes up for me. I shall attempt briefly to note several perspectives on the issue of secrets. To no one's surprise I will not solve the problems, but with luck I will say enough to provoke discussion.

The traditional Roman Catholic analysis of confidentiality is a convenient beginning. It assumed that knowledge about a person amounted to power over that person, power that could be used for good or ill. A general duty to use the power for good followed, on these terms, from fundamental duties of beneficence and nonmaleficence. Knowledge can be used to help people or hurt them, and, like other kinds of power, this power of speech is subject to ordinary constraints: It should not be used to hurt, and, all things being equal, should be used to help.

The Catholic analysis goes on to contrast the natural obligation to keep secrets with more stringent responsibilities rooted in commitments. These might be (a) a commitment after the fact (promised secret); (b) a commitment that served as the reason that information was acquired, or as a quid pro quo (a commtted secret); and (c) an implicit promise that serves as the quid pro quo (a professional secret). The general idea is that information I receive as a result of committing myself to keeping a secret is especially confidential. It is doubly protected by the natural duty not to harm another and by the bond of a promise.[1]

We can apply this analysis directly to the cases I described. The conclusion will be: Insofar as I promised not to tell, I must not. The promise is an implicit aspect of the medical or priestly role. But what about other professionals? Lawyers clearly grant confidence to clients and reporters to their sources, but do academics with their colleagues or students? And what of the medical history of someone in public life? By focusing our attention on the idea of an implicit promise, the traditional Catholic analysis implies the centrality of human choice. The strictest bond applies only when I have chosen to let it.

While I do not deny personal responsibility, I begin with an assumption that basic obligations can arise apart from individual choices. The reason is that the self has some fated engagements. We are not able to design our lives and loves as an artist might design a work of art. The paradigmatic person is not unattached but encumbered.

In other words, I begin with the conviction that our lives are fundamentally lives of interdependence. The newborn, the sufferer from Alzheimer's desease, the adolescent trying to figure out who he is--all these illustrations of marginally independent forms of existence are in fact prisms of what is means to be a self. We are not terribly different from them. We are not most truly ourselves when we feel "in charge" but when we acknowledge that our lives are lives of coping and neediness.

Thus, the core of ourselves is found in our loyalties, in those bonds that shape us and that give purpose to our lives. Some of these loyalties are damning and some may be salvific; I do not wish here to attempt to sort out all the possible allegiances and betrayals that can become the substance of a life. All I mean to do is insist that we should begin our moral reflections with the claims of loyalty.

II

We share a past with people who are not always of our own choosing. They have a history--of loves, disappointments, successes and failures, projects and hopes; children, parents and lovers. These loyalties of theirs have made them who they are as we know them. They constitute our associates' particularity.

In The Mill on the Floss George Eliot presents an example of the problems that arise when past associations are not respected. When they fall in love, Stephen and Maggie are engaged to others. He is conventionally engaged, but Maggie, whose life has been joyless, has drifted into a platonic bond with a fine but unattractive childhood acquaintance. Stephen feels that their existing bonds should be broken: "We should break all these mistaken ties that were made in blindness and determine to marry each other," he tells Maggie. "We can't help the pain it will give. It is come upon us without our seeking; it is natural..." Stephen argues that fidelity will only make their betrothed partners unhappy: "[T]here may be misery in it for them as well as for us." To this Maggie responds that feeling constantly cuts across commitments made in the past.

> If life were easy and simple, as it might
> have been in paradise...I mean if life did
> not make duties for us before love comes

> --[then] love would be a sign that two people ought to belong to each other. But I see--I feel it is not so now: there are things we must renounce in life: some of us must resign love. Many things are difficult and dark to me; but I see one thing quite clearly--that I must not, cannot seek my own happiness by sacrificing others. Love is natural; but surely pity and faithfulness and memory are natural too. And they would live in me still and punish me, if I did not obey them.[2]

In the event she does run away with Stephen, but she regrets it. "If the past is not to bind us, where can duty lie? We should have not law but the inclination of the moment." Stephen does not accept her analysis, of course. "You can't save them from pain now; you can only tear yourself back from me, and make my life worthless to me." But this time she holds firm.

> Faithfulness and constancy mean something else besides doing what is easiest and pleasantest to ourselves. They mean renouncing whatever is opposed to the reliance others have in us--whatever would cause misery to those whom the course of our lives has made dependent on us.[3]

This stress on the importance of past commitments affects our discussion of speech as well as of love. What we say can be faithful to those who are a part of our past, or it can betray them.

III

If Maggie is right, past involvements limit what we can say and to whom. We rightly praise persons with the courage to risk their careers in acts of "whistleblowing," but our respect is cheap if we do not see that there is a prima facie obligation to keep the company's secrets. Peter Drucker argues that focus on the choice to break confidence is misdirected; the prior question is creation of a climate of trust between superior and inferior in the organizational hierarchy. If these ties of trust and loyalty break down, the weaker party becomes "powerless against the unscrupulous superior" who "no longer can recognize or meet his obligation to the subordinate." A whistleblower is a confidence breaker, he continues, an "informer" and "the only societies in Western history that encouraged informers were bloody and infamous tyrannies--Tiberius and Nero in Rome, the Inquisition in the Spain of Philip II, the French Terror and Stalin."[4]

Drucker's general point is that the breaking of confidence that whistleblowing involves should be the exception rather than the rule. More than a perception of injustice, it reveals a fundamental collapse of community. Persons who are unwilling to limit their speech in virtue of indebtedness to groups of which they have been a part cannot really have been members of a moral community, for community cannot exist without trust that present engagments will have some degree of permanence. To be sure, this failure of community may not have been the whistleblower's fault. But its absence is tragic and a most fundamental corruption.

Past engagements of the self create expectations and obligations of confidentiality. Thus, talk about my student or my colleague must be restricted by past association, even if-- as in these cases-- I did not choose the involvement. In both cases, I have more than a general duty: I have a role-related one in virtue of a common past. In neither case, however, is the correct moral inference from this fact clear. In order to advance, we must raise the question of the particular kind of relationship and expectation that are involved. Some relationships involve an absolute duty of keeping confidence--but not all personal involvements carry the same degree of stringency.

It's probable that I have a stronger duty to keep secrets about my student than my colleague. I gained knowledge about her in private, in a context of power imbalance between us, so her level of trust was high. Her struggles are not a matter of public record. In contrast, my colleague's character is public, perhaps the liabilities more conspicuous than the assets. He cannot expect anything more from me than candor, although his interpretation of a common history may well differ from mine. But I cannot have a duty never to mention the perceived weaknesses of those I know.

If this casuistry is credible, I should talk about my colleague, but am stopped from revelations about my student. This result is troubling, for it appears that supposedly moral principles are keeping me from doing an act of kindness. The student is dealing with a teacher who wants to help her. To resolve problems like this, traditional Catholic moralists developed the category of "mental reservation" or "veiled speech." The general idea is a studied ambiguity, with the full content reserved "in the mind" or "veiled."[5]

This concept has two fundamental assumptions. First, most speech about social matters carries a significant breadth of meaning. Communication is polyvalent. Calling a friend thorough is an insult in some contexts and a compliment in others. What one singles out to feature in a personal description is a fateful choice, as all readers (and thoughtful writers) of letters of recommendation know. "He's tied up" may mean he is bound to his chair, in a committee meeting, having a drink or in the bathroom. The metaphorical quality is inseparable from speech about social matters.

Second, the veiled speech theory assumes that we should cherish this polyvalence rather than attempting to exorcise it. Sissela Bok, in Secrets, takes the contrary view. She discusses the Tarasoff case and arugues that the majority of the California court came to the right decision. "No evidence suggests that therapy will be imperiled if patients know that therapists have the duty to reveal their plans of violence." Futhermore, "It is not right...to risk one person's life in order to help patients and reduce the violence in society. Tatiana Tarasoff should not have had to run that risk without having consented thereto."[6] For Bok, the driving force is worry about abuse of professional power. Ambiguous speech would contribute to professional mystification and demagoguery.

I disagree. Ambiguity that confuses is bad;

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ambiguity that lets me suggest the need to help, or ways of helping, is a blessing. So I might say, "Helen's been having some tough personal times," or "She has had a rotten deal and needs help," or "Try to get her to come in to talk to you." Tatiana Tarasoff could have been warned and protected with veiled speech. In artful ways, we can use speech to help without betraying a confidence. In speech about both colleague and student, I should "veil" and play the poet. The veil covering the student's nakedness should be thicker in the sense of disclosure of the details, yet more flexible in the urgency of communication. Silence is a less legitimate option here than in response to the question about the colleague; indiscreet detail would be worse.

IV

Some of the hardest issues of confidentiality, however, come up in less intimate contexts, contests in which expectations are generated, but in which they cannot possibly be met literally. Mark Siegler, a physician writing in the New England Journal of Medicine, holds that confidentiality is a "decrepit concept." It is, Dr. Siegler states, "old, worn-out and useless." He cites the case of a patient in a large teaching hospital. The patient was admitted for an elective gall bladder removal, and was surprised that a particular physician had seen his chart. At this point Siegler did a little checking. He was "amazed" to learn that

> at least 25 and possibly as many as 100 health professionals and administrative personnel at our university hospital had access to the patient's record and that all of them had a legitimate need, indeed a professional responsibility, to open and use that chart. These persons included 6 attending physicians (the primary physician, the surgeon, the pulmonary consultant, and others); 12 house officers (medical, surgical, intensive-care unit, and "covering" house staff); 20 nursing personnel (on three shifts); 6 respiratory therapists; 3 nutritionists; 2 clinical pharmacists; 15 students (from medicine, nursing, respiratory therapy, and clinical pharmacy); 4 unit secretaries; 4 hospital financial officers; and 4 chart reviewers (utilization review, quality assurance review, tissue review, and insurance auditor).[7]

It is of interest, Siegler continues, that this patient's problem was straightforward, and he therefore did not require many other technical and support services that the modern hospital provides. Siegler notes that there was no need to call in the chaplain, physical therapist, occupational therapist, or consultant physicians. Even then, he goes on,

> Upon completing my survey I reported to the patient that I estimated that at least 75 health professionals and hospital personnel had access to his medical record. I suggested to the patient that these people were all involved in providing or supporting his health-care services. They were, I assured him, working for him. Despite my reassurances the patient was obviously

> distressed and retorted, "I always believed that medical confidentiality was part of a doctor's code of ethics. Perhaps you should tell me just what you people mean by 'confidentiality!'"[8]

Siegler goes on to argue that the logistics of modern medicine, expecially in group practice and tertiary care settings, make confidentiality literally understood not only impossible but undesirable. Information must be shared among members of a health care team, if patients are really to be helped. The real problem, he contends, is "indiscretion," i.e., blabbing about patients outside the health care setting.

I concede Siegler's general point that in a context like his the duty of keeping confidence must attach to the medical team. But is this obligation a substitute for individual duties? The limitation of Siegler's argument is that he is so preoccupied with professional necessity that he loses sight of the legitimate bite of the patient's expectations. The patient entrusts himself to someone, telling the physician of his marital problems or the nurse of his career failure. Should the health care team pool all this information on the chart or in staff conferences? Well-intentioned as that might be (in the best case), it would amount to a betrayal of the patient's trust, for he naturally wants information about himself "veiled," as I should protect the life of my student.

The institutional imperative of modern medicine need not obliterate these expectations--and it does not violate them in the best clinical practice. Knowledge and social facts must be shared within the team if care is to be responsible. But one can share knowledge without putting the transcript of a conversation into the record. An age of computerization should enable added sophistication in record keeping, but it never will if the idea of confidentiality is dismissed as "decrepit."

V

My suggestions so far have not addressed the question of the President's uro-genital surgery. This is a difficult kind of issue, raising the question of whether there are areas of life that should necessarily be kept secret -- things it is in some sense intrinsically wrong to talk about.

The reason privacy matters so much is that actions and selves are defined in terms of the audience present. Confession of infidelity is one thing in the bedroom, another in the tabloids. Without zones of privacy, personal repentance and confession are impossible. Thus, at a minimum, we can say that any given culture must respect certain zones of privacy if it is to preserve social space for acts of contrition and kindness.[9]

Can we go beyond this argument to suggest that some kinds of confidences or secrets should never be broken, that some kinds of intimacy are intrinsic to the constitution of the human self in any culture? If so, we might speak, in a way different from traditional Catholicism, of a natural duty or realm of confidentiality.

The idea of such cross-cultural norms is not bizarre. For example, many of us unequivocally reject cannibalism because it violates a kind of innate sanctity of the human body. We reckon as perverse cultures who do not share this revulsion. We have a similar feeling about slavery. In these cases we tend to think there are some cross-cultural absolutes. Are there also aspects of the self and its relations that are intrinsically private; duties to keep confidence that are not context-dependent but universal?

I want to nominate for discussion three kinds of secrets that any just person or society will keep. I describe them in an assertive mode, meaning to provoke and learn. The first of these possibilities concerns the confessions or agonies of the soul at time of death. The end of human life in historic community is a moment that seems intrinsically private, and it has been so regarded by most, if not absolutely all, cultures. Why are reconciliations, disappointments and feelings at the end essential components of the public record? Even the last words of a Pope, a CIA director or a dictator should not be treated as public unless clearly so intended.

Second, the intimacies shared by lovers and at birth have always seemed to be peculiarly sacrosanct. When Delilah betrays Samson, it is not the same thing as it would be if he were finked on by one of his colleagues. And this theme is not peculiar to the religious literature of the West. When a disappointed lover goes public with facts about the former "love life," even the greatest boor is insulted--if not injured.

Finally, we might say that everyone has a kind of self-image, a kind of extra-territoriality, that it is intrinsically wrong to disclose--perhaps even to himself. Ibsen's play The Wild Duck refers to this as a person's life-lie, but the fact that the self-concept that makes one tick is at best a half-truth is not really the point. Rather what is central is the fact that there is a core of selfhood in anyone that it is immoral to make public. Is there such a thing as being too insightful?

These considerations would stake out a zone of secrecy around each individual, a zone encompassing the person's birth and loves, death and most distinctive interiority. Only publicly produced forms of autobiography justify biography, and there are areas of selfhood that the media should leave entirely alone. This is not to discourage investigative reporting or to deemphasize the proper role of the press in a democratic society, only to assert that some things are intrinsically off limits.

Coverage of the President's prostate surgery probably falls outside this territory. I concede that the public should know that he has a medical problem, that it is being treated and that the prognosis is good. Moreover, his illness may provide an occasion for teaching the public about prostate examination and surgery. But somewhere a line is crossed, perhaps when a facsimile of the presidential penis is presented in newspapers and on network TV. Insensitivity to such an assault on dignity suggests a loss of perpective in the culture.

VI

I have suggested that the duty to keep confidences arises from our more-or-less intimate associations with each other. When we are torn between the duty to keep confidence and to help, we should veil our speech. And there may be some things that are intrinsically confidential. The fact that I have suggested, wondered in public, is now an open secret.

Footnotes

1. Thomas J. O'Donnell, S.J., Morals in Medicine (Westminster, Maryland: The Newman Press, 1960), pp. 319ff.

2. Eliot, The Mill on the Floss, p. 739.

3. Ibid., p. 749.

4. Peter F. Drucker, "What is Business Ethics?" in Across the Board (October 1981), p. 31. Reprinted from The Public Interest, No. 63 (Spring 1981).

5. Bernard Haring, The Law of Christ, Vol. III, pp. 567f.

6. Sissela Bok, Secrets p. 168. Michael Bayles, in his book Professional Ethics, shares her basic orientation.

7. Mark Siegler, "Medical Confidentiality--A Decrepit Concept," New England Journal of Medicine (December 9, 1982): p. 1519.

8. Ibid.

9. Cf. Charles Fried, An Anatomy of Values (Cambridge: Harvard University Presss, 1970), pp. 137f.

David H. Smith is Professor of Religious Studies at Indiana University in Bloomington, where he has taught since 1967. He chaired the department from 1976 to 1984, and he has headed the Independent Learning Program and a variety of committees of the College of Arts and Sciences.

Since 1982, he has directed the Poynter Center for the Study of Ethics and American Institutions, which has studied the social responsibility of professions and professionals, the ethics of corporations and the social role of trustees. The Center's projects in research, faculty development and community education have been funded in recent years by the Lilly Endowment, the Exxon Education Foundation, the National Endowment for the Humanities and the National Institutes of Health.

Mr. Smith directed NEH seminars for college faculty members in the summers of 1978 and 1979 and academic year 1981-1982. He is a Fellow of the Institute for Society, Ethics and the Life Sciences (Hastings Center).

He serves as a consultant on the teaching of ethics and values in higher education and is in demand as a lecturer in this country and abroad. In 1985-86, he conducted professional development training conferences for the U. S. Navy Chaplain Corps.

In these diverse endeavors, Mr. Smith's ongoing concerns are with the importance, and the problems, of loyalty and tradition; he retains an interest in the diverse formulations of natural law.

He holds the BA from Carleton College, the BD from Yale Divinity School and the PhD from Princeton.

Professor Smith's most recent book is Health and Medicine in the Anglican Tradition (Crossroads).

PROGRAMS--Winter and Spring 1988

JAN 22	ETHICS IN ACADEMIA: A PANEL DISCUSSION -Mary Ann Bunda, Educational Leadership -George Dennison, Provost -Neil Kent, Psychology -Shirley VanHoeven, Communication -Irene Vasquez, Religion
FEB 9	SOVIET BIOETHICS -Richard DeGeorge University of Kansas
FEB 10	INSIDER-TRADING -Gerald Postema Universiity of North Carolina
FEB 19	JUSTICE, INTEREST, AND INTEGRITY -Gerald Postema, University of North Carolina
FEB 26	RAISING THE ETHICAL CONSCIOUSNESS OF BUSINESS STUDENTS: A QUESTION OF RESPONSIBILITY--THE B-SCHOOLS PHILOSOPHIES? A MUTUAL ENDEAVOR? -Pamela Rooney, College of Business, WMU
MAR 18	CONFLICTING INTERESTS? THE USE OF HUMAN SUBJECTS IN MEDICAL RESEARCH -Gregg Stover, Attorney Fox, Thompson, Morris Stover, & O'Connor

MAR 24	ETHICS IN JOURNALISM: A PANEL DISUCSSION -George Robeck, Communication, WMU
MAR 30- APR 1	THE GOLDEN RULE -Bernhard Gert, Dartmouth College WMU VISITING SCHOLAR
MAY 18 7:30 PM	ISSUES IN MEDICAL ETHICS Fetzer Business Development Center [co-sponsored with Bronson Methodist Hospital] -Father John Paris, College of The Holy Cross

ETHICS IN ORGANIZATIONS
WINTER AND SPRING 1988

JAN 14 ETHICS IN THE WORKPLACE: THE CHALLENGE OF AIDS--A PANEL DISCUSSION
-Shirley Bach,
General Studies Science Area
-Donald Batts,
The Upjohn Company
-John Hartline,
Bronson Methodist Hospital
-Michael Manty,
NWL Control Systems
-Kelli Sweet,
Kalamazoo Public Schools

FEB 29 CRISIS COMMUNICATION
-L. James Lovejoy,
Gerber Products, Inc.

MAR 31 MORAL RULES AND MORAL IDEALS: A CRITIQUE OF THE GOLDEN RULE
-Gernhard Gert,
Dartmouth College

MAY 23 PLANT CLOSINGS
-Louis S. Jacobson
W. E. Upjohn Institute for Employment Research

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